



August 20, 2008

Name

Address

City, State, Zip

RE: Holbrook Annexation

Dear Property Owner:

This letter is written as a follow-up to my prior letter dated July 29, 2008.

At the City Council Meeting of August 5, 2008, the City Council approved the Annexation Agreement previously mailed to you but with certain minor modification. Attached is the final copy of the Lehi Annexation Agreement, with the minor modification. If you wish, you may obtain additional copy(s) of the final form of the agreement from the Lehi City Planning Department, 99 West Main Street in Lehi.

As I indicated in my prior letter, you can participate as a signatory to the Annexation Agreement if you wish, but you are under no obligation to do so. However, if it is your desire to participate in the agreement, you must notify the Planning Department prior to Wednesday, September 3, 2008. Again, a copy will also be made available for your signature at the Planning Office. All parties who are listed as owners of record on your property must sign and the document must be signed and notarized prior to September 3, 2008. There will be no fees or expenses charged by the City if the agreement is signed prior to this date.

If, subsequent to this date, you decide to participate in the Annexation Agreement, you must advise the Planning Department of your intent to participate prior to Thursday, November 13, 2008 and prior to that date you must also make application for a zone change consistent with the General Plan and pay the application fee of \$400.00. The zone change must then be approved by the Planning Commission and City Council following scheduled public hearings. Thereafter it will not be possible to participate in the Annexation Agreement. You may, however, apply for a zone change at any time by following the requirements prescribed in the Lehi City Development Code.

For your information, with respect to Agreement Exhibits, property owners will need to prepare their own versions of Exhibits C and D as they apply to their respective properties. To recap the status of exhibits:

Exhibit A- legal description of the entire Annexation Parcel (the City will provide).

Exhibit B- is the January 22, 2008 Resolution of intent to annex the property (the City will provide).

Exhibits C-1 thru C-___ consists of legal descriptions for each Master Developer's respective portion of the larger Annexation Parcel and should be prepared by the landowners and/or developers for their property.

Exhibit D- is the Project Plan depicting the zoning for each Master Developer's portion of the Property and should also be prepared by the landowners and/or developers and submitted to the City with the fully executed Annexation Agreement (the base information for the preparation of that exhibit can be obtained through the Planning Director Dianna Webb, and the City Staff as necessary).

Exhibit E- is the Water Rights Transfer Procedures form, which will be made available from the Lehi Planning Department in the next few days.

With respect to Acknowledgements; all involved need to make sure that **actual property owners** acknowledge and consent to the Annexation Agreement in those circumstances where a developer is the party signing the agreement. The language below is adequate for this purpose and, in addition, attached is a sample of a similar document used for another project. The City chose to not add Acknowledgements to the form of agreement, but the City will need some form of title report or assurance that someone with the proper authority is signing the agreement (for example, the City does not want to have a lender claiming that the City has improperly placed an encumbrance on their collateral, etc.).

CONSENT, ACKNOWLEDGEMENT AND AUTHORIZATION OF OWNER

I hereby voluntarily consent to the terms of this Agreement and authorize Anderson Lehi, LLC to execute it. I have read the Agreement in full and have had sufficient time and opportunity to review it with independent counsel. This consent, acknowledgement and authorization is made with knowledge that the Agreement will have binding legal effects and benefits upon my property interests and will be recorded in the Utah County Recorder's office. I am satisfied with the conduct of Anderson Lehi, LLC and Anderson Development Services, Inc and their counsel in connection with this Agreement and hereby agree to the terms thereof.

If you have questions about this process, you may contact the Planning Department at (801) 768-7120, Ext. 2.

Sincerely,



Jamie Davidson
City Administrator

cc: Lehi City Mayor Howard H. Johnson
Lehi City Council

ACKNOWLEDGEMENT AND CONSENT TO RECORD

_____, as the holders of an ownership interest in a portion of the property described in Exhibit A to the Annexation Agreement for _____, hereby acknowledge and consent to the terms of the Annexation Agreement for _____ including, without limitation, the provisions of paragraph _____ that the Agreement shall be recorded in the office of the Utah County Recorder against the property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership of any portion of the property.

Dated and executed this ____ day of _____, 2008.

Property Owner

Dated and executed this ____ day of _____, 2008

Property Owner

Recording Requested By and
When Recorded Return to:

Lehi City Recorder
153 North 100 East
Lehi, City 84043

For Recording Purposes Do
Not Write Above This Line

ANNEXATION AGREEMENT

This Annexation Agreement (this "Agreement") is made and entered into and made effective as of _____, 2008 (the "Effective Date"), by and between Lehi City, a Utah municipal corporation (the "City"), by and through its Mayor, and the following (together with their respective successors and assigns, individually, a "Master Developer" and, collectively, "Master Developers" and together with the City, collectively, the "Parties" and, individually, a "Party"): Anderson Lehi LLC, a Utah limited liability company, _____, a _____ and _____, a _____. Each term used but not otherwise defined herein shall have the meaning ascribed thereto in Appendix 1 attached hereto and incorporated herein by this reference.

RECITALS

A. On January 22, 2008, the City adopted a resolution describing several parcels of real property located in Utah County, State of Utah and owned by various Persons as such real property is more particular described on Exhibit A attached hereto and incorporated herein by this reference (such real property being the "Annexation Parcel") and indicating the City Council's intent to annex the Annexation Parcel (a copy of which is set forth on Exhibit B attached hereto and incorporated herein by this reference) (the "Resolution").

B. Each Master Developer is a developer of a portion of the Annexation Parcel consisting of approximately 1,831 acres as more particularly described on Exhibit C attached hereto and incorporated herein by this reference (all such portions being, thereof being, collectively, the "Property") as such Master Developer's portion of the Property is described on Exhibit C-1 through C-____.

C. The owners of the Property (individually, an "Owner" and, collectively, the "Owners") together with other Persons have also filed a petition with the City requesting that the City annex approximately the Annexation Parcel, including the Property (the "Petition").

D. The City has provided one or more municipal-type services to the Annexation Parcel continuously for more than one year.

E. The City Council has determined, as two separate and independent bases for the annexation of the Property, to annex the Property both (a) pursuant to Utah Code Section 10-2-418 based on the Resolution and (b) pursuant to Section Utah Code Section 10-2-408(1)(b) based on the Petition.

F. The annexation of the Property on the terms and conditions of this Agreement satisfies the purposes of the Utah Municipal Land Use, Development and Management Act, Utah Code Section 10-9a-101, et seq. ("MLUDMA"); and the policy goals and objectives of the Lehi City General Plan and City Code.

G. As a condition to Master Developers and the Owners consenting to the annexation of the Property and not withdrawing their signatures from the Petition, Master Developers and the City have agreed to enter into this Agreement, providing for, among other things to entitle each Master Developer to develop such Master Developer's portion Property in accordance with the Project Plan (the "Project").

H. The City, acting pursuant to the its authority under MLUDMA, the City's Laws, including City Code Section 27.060, has made certain determinations with respect to the proposed project and in the exercise of its legislative discretion, has elected to approve this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated into this Agreement and are acknowledged to be true) and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

APPROVAL OF ANNEXATION, AGREEMENT, ZONING AND PROJECT PLAN

1.1 Annexation.

1.1.1 **Timing and Basis.** The City has adopted an annexation ordinance annexing the Property with such ordinance being effective upon execution of this Agreement. As separate and distinct bases for annexation the City Council has determined to annex the Property, together with the Annexation Parcel, both (a) pursuant to Utah Code Section 10-2-418 based on the Resolution and (b) pursuant to Section Utah Code Section 10-2-408(1)(b) based on the Petition.

1.1.2 **Support.** If one or more protests or appeals are filed with respect to such annexation then the City agrees to oppose such protest or appeal. Master Developers agree to cooperate reasonably with such effort.

1.2 **Approval of Agreement and Project Plan.**

Following all necessary public hearings required for the approvals of such annexation, General Plan Amendment and zoning designations and this Agreement, the City Council, in the independent exercise of its legislative discretion, has elected to approve annexation of the Annexation Parcel and the Project Plan, including the zoning designations of the Property as indicated therein, including the planned uses, density, intensity and general configuration thereof.

**ARTICLE II
VESTED RIGHTS AND RESERVED LEGISLATIVE POWERS**

- 2.1 **Vested Rights.** Subject to compliance with the provisions of this Agreement and the City's Laws, each Master Developer shall have the right to develop and construct the residential and commercial uses permitted by the Project Plan applicable to such Master Developer's portion of the Property in accordance with the uses, densities, intensities, and general configuration of development approved by this Agreement. The rights of a particular Master Developer with respect to such Master Developer's portion of the Property shall not inure to or be for the benefit of any of the other Master Developers except as such particular Master Developer shall indicate, if at all, in a separate written assignment of or other agreement regarding such rights.
- 2.2 **Reserved Legislative Powers.** Master Developers acknowledge that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the applicable ordinances and regulations of the City that are in effect as of the Effective Date and therefore applicable to the Project under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the City; and, unless the City declares an emergency, each Master Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

**ARTICLE III
DEVELOPMENT OF PROJECT**

- 3.1 **Development of Project.** All development of the Property by Master Developers shall be consistent with this Agreement, including the Project Plan, and the City's Laws;

provided however, that any Master Developer may, as market conditions or other circumstances dictate, apply to the City for approval of changes to plans or uses that depart from the foregoing.

- 3.2 **Zoning Designation.** The City has, by ordinance, given each Master Developer's portion of the Property which is the subject of this Agreement the zoning designations provided in the Project Plan and each Master Developer has the right to develop such Master Developer's portion of the Property, and each portion thereof, consistent with the zoning, densities, uses, configurations and entitlements provided for such Master Developer's portion of the Property in the Project Plan, and each portion thereof, and pursuant to the City's Laws. If any lot or parcel of record as shown on the Project Plan falls into two or more different zoning districts, the portion of such lot designated within a particular zoning district shall be deemed to be located within the boundaries of such zoning district as depicted on the Project Plan and, for the purposes of the interpretation and application of City Code Section 02.030, neither zoning district within which such lot (or portion thereof) is located shall be deemed to be more restrictive than any other zoning district within which such lot (or portion thereof) is located.
- 3.3 **Site Planning, Platting and Phasing.** At any time after the Effective Date, each Master Developer shall be allowed to submit applications for platting and site planning of such Master Developer's portion of the Property. In addition to complying with the time frames stated pursuant to the City's Laws and MLUDMA the City shall review each such application and determine whether such application is complete under the City's Laws in a timely manner. The City shall consider and determine whether to approve each completed application in a timely manner. Each Master Developer may proceed by planning, platting and constructing all of the Project at one time or by phasing portions of the Project as market and other conditions dictate, as long as each phase provides for a logical extension of roads, infrastructure and utilities through such Master Developer's portion of the Property; as approved by the City in conformance with the requirements of this Agreement and the City's Laws. Notwithstanding any other provision of the City's Laws, each subdivision plat and site plan approval given or issued by the City (or any council, office, commission or committee thereof) to any Master Developer or pursuant to this Agreement shall remain in full force and effect for a period of five (5) years from the date of such approval as long as such approval is pursued with reasonable diligence, with an option on the part of such Master Developer to request that such approvals be extended for an additional five (5) years; and such a request shall not be unreasonably denied by the City if this Agreement has been substantially complied with and such approvals are being pursued with reasonable diligence unless (a) such Master Developer applies to vacate such permit or approval in compliance with the City's Laws or (b) such permit is a building permit or other permit that would be impacted by changes in the City's Design Standards and Public Improvement Specifications, in which case such permit shall have the term provided in the City's Laws.

3.4 Development Review Committee.

3.4.1 Development Review Committee Status. The City shall maintain its development review committee as currently provided in Section 03.060 of the City Code or a similar committee with substantially the same administrative authority (the "DRC") for the purposes of review of subdivisions and site plans for the Project.

3.4.2 Development Review Committee Process. The DRC shall meet promptly on an as-needed basis, but is not obligated to meet more frequently than weekly, to review the applications for subdivision plats and site plans for the Project. Master Developer shall not be entitled to any scheduling priority for Development Review Committee meetings over other applicants.

3.5 Negotiation With Other Governmental Service Providers. Master Developer agrees to cooperate and negotiate in good faith with other governmental service providers including, but not limited to, the Alpine School District, for the purchase of property within such Master Developer's portion of the Property for the location of facilities for such other third-party governmental service providers.

ARTICLE IV PUBLIC IMPROVEMENTS

4.1 Public Improvements and Potential Reimbursement for System Improvements. As part of the development of the Property, each Master Developer may elect, by agreement with the City, to voluntarily install, construct, finance or pay for certain public improvements in order to provide access, infrastructure, amenities and municipal services to the Property, and/or adjoining properties (such public improvements being, collectively, "Public Improvements"). Some of the Public Improvements may be "System Improvements" or "Project Improvements (as such terms are defined in the Utah Impact Fees Act (UCA§ 11-36-101, *et seq.*) (the "Impact Fees Act"), the City's Laws and MLUDMA. To the extent that the Public Improvements to be installed, financed, paid for or constructed by a Master Developer as part of the Project are System Improvements which are oversized as defined in the City's Laws and thereby create excess or additional capacity to service other areas of Lehi City beyond the proportionate share or need created by the applicable portion of the Project at the level of service standards as defined, designated and included in the present or future City's Capital Facilities Plans and Lehi City's Design Standards and Public Improvements Specifications ("Reimbursable Improvements"), such Master Developer shall be entitled to reimbursement for the costs incurred by such Master Developer with respect to such Reimbursable Improvements in a manner consistent with the City's Laws and as further provided below ("Reimbursable Costs"). Notwithstanding the definition of "City's Laws" in Appendix 1 for other purposes in this Agreement, in the event that the definition of what constitutes Reimbursable Improvements as defined in the City's Laws,

including, but not limited to, future amendments to the City's Capital Facilities Plans and/or Lehi City's Design Standards and Public Improvements Specifications changes in the future, Master Developer shall be entitled to the benefit and/or obligations of any such amendments.

4.1.1 Reimbursement Options. During the term of this Agreement, subject to the City's Capital Facilities Plans, the City's Laws, MLUDMA and the Impact Fees Act the City shall either pay, credit or provide impact fee certificates as more fully set forth below to each Master Developer to reimburse such Master Developer in a manner as elected by the City from the impact fees collected for the Reimbursable Costs of the Reimbursable Improvements, as such fees are collected, until Master Developer has been fully reimbursed for the Reimbursable Costs for such Reimbursable Improvements.

4.1.2 Impact Fee Certificates. To the extent not paid directly or credited to a Master Developer as provided above, the City shall reimburse such Master Developer for such Master Developer's Reimbursable Costs of such Reimbursable Improvements as referenced in Sections 4.1 and 4.1.1 above as follows:

- (a) At the time that such Reimbursable Improvements are dedicated for public use by a Master Developer, the City shall issue an Impact Fee Certificate to such Master Developer in the face amount of such Master Developer's Reimbursable Costs for such Reimbursable Improvements.
- (b) Each Impact Fee Certificate shall:
 - (i) not entitle such Master Developer to reimbursement for any financing fees, interest or other financing costs incurred for funding construction of any Public Improvements.
 - (ii) entitle such Master Developer to reimbursement for funds paid for the design, engineering, installation and construction of Reimbursable Improvements
 - (A) to the City on behalf of the City's contractors and suppliers, or
 - (B) directly to contractors and suppliers as authorized by the City.
 - (iii) represent the right to reimbursement for impact fees of the type stated on the Impact Fee Certificate that have been paid or a credit against such impact fees to be paid within: (1) initially the area

covered by such Master Developer's Project Plan with respect to which such impact fees have been or are to be collected; (2) in the event that the projected impact fees to be paid within the area covered by such Master Developer's Project Plan are not anticipated to be sufficient to fully reimburse such Master Developer, and to the extent that such additional Reimbursable Costs for Reimbursable Improvements have not been otherwise paid or credit provided as set forth above, then such Impact Fee Certificates may be used or redeemed within both the Annexation Parcel and other areas of the City located west of the Jordan River (collectively the "Benefitted Area"), but such Impact Fee Certificates shall be subordinate to any Impact Fee Certificates issued to another Master Developer for the area covered by their respective Project Plans within the Benefitted Area until any such Impact Fee Certificates have fully redeemed.

- (iv) be fully transferrable and assignable by the Master Developer to which such Impact Fee Certificate was issued to any Person.

4.1.3 Assessment Area Financing. Upon application by any Master Developer, the City agrees to cooperate and consider in good faith the creation of one or more assessment areas pursuant to the Assessment Area Act, Title 11, Chapter 42, Utah Code Annotated, as such law may be amended from time to time, as well as other relevant Utah law, sufficient to finance the Public Improvements in connection with the development or redevelopment of the Property in a manner consistent with the Project Plan. In the event that any such assessment areas are created, they (a) shall be based on terms that are commercially reasonable and customary for such areas, (b) shall not require the City to pledge or commit the City's full faith and credit with respect to the financing obtained for such area, (c) shall have a term of no more than 20 years but no fewer than 10 years, (d) shall be cost-neutral to the City, including reimbursement to the City for its reasonable out-of-pocket expenses in administering such areas and (e) shall assess only developable acreage within the Property. Funds made available to any Master Developer for Public Improvements pursuant to the Assessment Area Act shall not count as a reimbursement to such Master Developer. Each Master Developer shall reasonably cooperate with each other Master Developer that applies to the City to create one or more assessment areas described in this section in obtaining such creation and the financing of the Public Improvements through such assessment area.

4.1.4 Impact Fees. Nothing contained herein shall exempt, release, or excuse any Master Developer, its successors, assigns, or other developers that develop portions of the Property from paying and receiving credits for reasonable impact

fees and charges required for development of the Property, or any portion thereof, in accordance with the City's Laws and MLUDMA.

4.1.5 Pioneering Arrangement Among Master Developers. Each Master Developer who signs this Agreement agrees as follows with respect to the construction and installation of Public Improvements and the improvement costs related thereto:

- (a) In the event one or more of the Master Developers desires to connect to, utilize or appropriate the use of any portion of the Public Improvements with respect to which any of the other Master Developers has not been fully reimbursed for the costs for such Public Improvements (such Master Developer who desires to connect to, utilize or appropriate the use of such Public Improvements being a "Connecting Party" and each Master Developer who has not been fully reimbursed being the "Pioneering Party"), such Connecting Party shall pay to the Pioneering Party such Connecting Party's fair and proportionate share for the use of any such Public Improvements to the extent that such Pioneering Party has not been reimbursed for the costs for such Public Improvements. The fair and proportionate share for such Connecting Party's connection to or utilization or appropriation of such Public Improvements shall include reimbursement of the reasonable costs incurred by each Pioneering Party in connection with such connection, utilization or appropriation of use including reasonable interest and administrative costs.
- (b) For development consistent with the Project Plan, each Master Developer (the "Granting Party") shall provide or cause to be provided reasonable access and easements to or for the benefit of each other Master Developer (such other Master Developer being the "Receiving Party"), without compensation for such access or easements (except as the Granting Party obtains through reimbursements). To the extent that such reimbursements are not obtainable, the Receiving Party shall pay for the fair and proportionate costs of the Public Improvements at the time of its connection to the Public Improvements (See paragraph 4.1.5 (a) which shall govern in such event).
- (c) Each Master Developer shall coordinate the location of stubs of Public Improvements on the boundaries of such Master Developer's portion of the Property with the Master Developers having an interest in the portion of the Property adjoining such boundary in a manner to reasonably minimize each such Master Developer's costs.
- (d) The obligations of this section 4.1.5 shall be privately enforceable by the Master Developers among themselves only and these obligations are not

binding upon the City and the City shall not have any obligation to interpret or enforce the provisions of this section.

- 4.2 **Possible Use of Eminent Domain for System Improvements.** Subject to compliance with all applicable state statutory requirements for the initiation of an eminent domain action and consistent with existing City policy to take such action to allow for construction of System Improvements, to the extent necessary to provide for the development of the Property (or any portion thereof) in accordance with, or to give effect to, the Project Plan, the City will cooperate in good faith to favorably consider utilizing its power of eminent domain and not unreasonably withhold such approval in order to provide rights-of-way to install the Public Improvements that are System Improvements in a manner to reasonably minimize each Master Developer's costs for such System Improvements.
- 4.3 **Parks, Trails and Pathways.** The Project Plan contemplates uses of land and open space for the development of a trail and pathway system. Each Master Developer shall cooperate with the City in the development of this trail and pathway system to ensure connectivity and consistency with existing City trails and pathways. In addition, each Master Developer shall coordinate with the City in the development of all parks and open space within the contemplated development area. To the extent that the trails and pathway systems are designated for public use and are constructed for the level of service standards included in the City's Capital Facilities Plan, the trails and pathways systems shall be publicly financed, owned and maintained and the City shall arrange for reasonably satisfactory compensation to the Owners to the extent of their respective interests in the portion of the Property on which such trails and pathways are located; except to the extent that such trails or pathways are designated and located within the right-of-way for the anticipated extension by the Utah Department of Transportation of 2100 North and/or within the setbacks required by the City adjacent to such highway, the City shall have no obligation to compensate the owners for any portion of that particular trail or pathway.

ARTICLE V MUNICIPAL SERVICES

5.1 **Water Dedication.**

- 5.1.1 At or before the time any Master Developer records a subdivision plat containing residential building lots or receives approval of a building permit for commercial or industrial development, as applicable, with respect to the Property or any portion thereof, such Master Developer shall be required to comply with the City's Water Rights Conveyance Requirements as established by City ordinance and the Lehi City Water Rights Transfer Procedures attached hereto, and incorporated herein by reference, as Exhibit E, by dedicating, or causing to be dedicated, the required water rights and/or required shares in a water or irrigation

company to the City for that portion of the Property being platted or receiving a building permit (the water rights and/or shares so dedicated for such portion being the "Water Dedication"). The Water Dedication includes water which may be used for both irrigation and municipal uses.

- 5.1.2 Subject to the requirements outlined in Exhibit E, the quantity of the Water Dedication shall be based upon the per acre schedule provided in City Code Section 27.070; provided, however, such Water Dedication may be conveyed from any water source or company, so long as (a) the quantity and authorized use of and title to the water is reasonably equivalent to the water rights held by Lehi Irrigation Company, a Utah nonprofit corporation, ("Lehi Irrigation") that would be represented by the shares in Lehi Irrigation that would be required to be dedicated pursuant to Section 27.070 in connection with the recording of such plat or building permit approval, (b) the water rights or shares have been finally approved by the Utah State Engineer for diversion at a point reasonably acceptable to the City Engineer and from a source that is capable of delivering the minimum quantity and quality of water necessary for use by the City and (c) the water available pursuant to the Water Dedication shall be of a quality that is reasonably acceptable to the City engineer. In evaluating the quality of proposed water sources, the City Engineer shall use a water quality standard which limits total dissolved solids to no more than 1,000 parts per million. That water quality standard may be achieved as part of the Water Dedication for that particular Master Developer's portion of the Property in a flexible manner including mixing from more than one of the Master Developer's approved points of diversion or sources of water in order to comply with this requirement. In the event that the City adopts, agrees to, or applies a new, different or more specific standard to address either the quantity and/or quality of the Water Dedication requirements in the future which pertains to the area included within the Annexation Parcel or the properties located west of the Jordan River, Master Developer shall be entitled to the benefits and/or obligations of any such amendments.
- 5.1.3 Any requirement to dedicate additional shares or water rights pursuant to City Code 27.070(B) with respect to an application to rezone any portion of the Property shall be no more than the net additional water rights resulting from the aggregate zoning changes on the Property at the time of such application. The water rights evidenced by a share of Lehi Irrigation shall presumptively be deemed to be sufficient in quality and annual quantity and rate of flow and to have an authorized use and point of diversion satisfactory to the City.
- 5.1.4 Upon application by any of the parties constituting Master Developer, the City agrees to cooperate and consider in good faith the use of water from Central Utah Water Conservancy District ("CUWCD"), to fulfill the City's water rights conveyance requirements. In the event that water from CUWCD is approved for

use in the future by Lehi City, it will require review on a case-by-case basis to determine how such water will be transferred and paid for.

- 5.2 **Provision of Municipal Services.** The City agrees to maintain the public improvements associated with the Project and dedicated to the City except as otherwise provided herein following satisfactory completion thereof by the Master Developer undertaking to provide such public improvements and acceptance of the same by the City and to provide standard municipal services to the Project (including fire, police, sanitary sewer, storm sewer, culinary water, secondary water and electrical power) subject to the payment of all fees and charges charged or levied for such services by the City in accordance with the City's Laws and MLUDMA. If any revisions or corrections of plats or plans already approved by the City shall be required by any other governmental entity having jurisdiction over the Project or lending institutions involved in financing, each Master Developer and the City shall cooperate where appropriate to obtain or develop reasonable, mutually acceptable alternative plans or plats. The obligation of the City to provide municipal water service to the Property or any portion thereof is contingent upon delivery of the Water Dedication for such Property or such portion, respectively. No Owner or subsequent purchaser shall have the right to receive municipal water service from the City with respect to any portion of the Property until the Water Dedication for such portion has occurred.

ARTICLE VI DEFAULT AND REMEDIES

- 6.1 **Default.** An "Event of Default" shall occur under this Agreement if any Party fails to perform its obligations under this Agreement where those obligations are due and such Party has not performed the delinquent obligations within thirty (30) days following delivery to such Party of written notice of such delinquency (a "Notice of Default") (such Party being the "Defaulting Party"). Notwithstanding the foregoing, if such failure to perform cannot be reasonably cured within the 30-day period, such failure to perform shall not be an Event of Default so long as such Party commences to cure such failure to perform within such 30-day period and diligently continues to pursue such cure in good faith until complete. Insolvency, bankruptcy or any voluntary or involuntary general assignment for the benefit of creditors by a Master Developer or the City, to the extent such are unresolved for a period of 180 days shall be deemed to be a default under this Agreement.
- 6.2 **Remedies.** Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies:
- 6.2.1 All rights and remedies available at law or in equity, including injunctive relief (without the obligation to prove damages or post any security), specific performance and damages.

- 6.2.2 The right to withhold all further approvals, licenses, permits or other rights associated with the Project or any development described in this Agreement until such default has been cured.
- 6.2.3 The right to draw upon any security posted or provided in connection with the Project.
- 6.2.4 To terminate this Agreement.
- 6.3 **Notice and Cure.** Any Party that issues or receives a Notice of Default shall, within three (3) business days, deliver a copy of that Notice of Default to each other Party to this Agreement. Any Party shall have the right, after the cure period provided in Section 6.1, to cure the related failure to perform and seek reimbursement from the Defaulting Party for the costs incurred in effecting such cure (the Party effecting such cure being the "Curing Party"). Notwithstanding any provision herein to the contrary, the Defaulting Party shall reimburse the Curing Party for such costs of curing such Event of Default within 15 days following delivery to the Defaulting Party of a written notice of such costs along with reasonable support documentation.
- 6.4 **Cross Default.** Only the Defaulting Party shall be subject to remedies and none of the other parties governed by this Agreement shall be deemed to be in default in any manner. For example, if one Master Developer shall create an Event of Default, the City may exercise its rights and remedies only against the Master Developer that is the Defaulting Party, but shall not take any action that would prohibit or revoke approvals, licenses, permits, uses or other rights associated with any other Master Developer for its respective portions of the Project.

ARTICLE VII GENERAL

7.1 **Assignment and Transfer.**

- 7.1.1 No Master Developer shall assign its obligations under this Agreement or any rights or interests herein without the prior written consent of the City which shall not be unreasonably withheld. It is contemplated that one or more Master Developers will transfer various portions of the Property to one or more Persons, that will develop specific projects on their respective portions of the Property. Each Master Developer shall be entitled to transfer the Property or any portion thereof or interest therein to any Person subject to the terms of this Agreement that are applicable to such portion of or interest in the Property. In the event of any such transfer of a Master Developer's interest in the Property (or any portion thereof or interest therein), the transferee shall be deemed to be Master Developer with respect to such portion of or interest in the Property for all purposes under this Agreement.

- 7.1.2 Nothing in this Section shall prohibit any Master Developer from selling such Master Developer's portion of the Property (or any portion thereof or interest therein) in the ordinary course of the business of developing the Property, nor shall any Master Developer be prohibited from selling such Master Developer's portion of the Property (or any portion thereof or interest therein) to one or more Persons for the purpose of erecting, constructing, maintaining and/or operating (or causing to be erected, constructed, maintained and/or operated) improvements thereon consistent with the requirements of this Agreement and the other applicable provisions of the City's Laws. Nothing in this Agreement shall prohibit the granting of one or more trust deeds and/or security interests for financing the acquisition and development of residential housing or other development on parcels within the Property.
- 7.1.3 Except in the Event of Default by a Master Developer, the City shall not have the right to convey, assign or be released from its obligations under this Agreement with respect to any Master Developer other than such defaulting Master Developer.
- 7.2 **Release of Master Developers.** In the event of a transfer of a Master Developer's portion of the Property or any portion thereof or interest therein and upon assumption by the transferee of such Master Developer's obligations under this Agreement with respect to such portion or interest, the respective transferee shall have the same rights and obligations as such Master Developer under this Agreement, and the Person that executed this Agreement as such Master Developer shall be released from any further future obligations with respect to that portion of the Property.
- 7.3 **Recordation.** After its execution, the Agreement shall be recorded in the office of the County Recorder at the expense of Master Developers. The terms and provisions of this Agreement, including the Project Plan, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property and shall run with the land, including the Property.
- 7.4 **Consents and Approvals.** Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with the City's Laws, MLUDMA, the Impact Fees Act and other applicable law.
- 7.5 **Representations.** Each Party represents and warrants to the other Party that the following statements are true, complete and not misleading with respect to the representing and warranting Party: (a) such Party has full authority to enter into this Agreement and to perform all of its obligations hereunder, (b) each individual executing this Agreement on behalf of such Party is doing so with the full authority of such Party, and (c) this Agreement constitutes the legal, valid and binding obligation of such Party enforceable in accordance with its terms.

- 7.6 **Time of the Essence.** Time is expressly of the essence with respect to the performance of each and every obligation under this Agreement.
- 7.7 **Amendments.** Any alteration or change to this Agreement shall be made only after complying with the notice and hearing provisions of MLUDMA and, to the extent not inconsistent with applicable provisions of the other City's Laws and other applicable law.
- 7.8 **Construction.** This Agreement shall be construed according to its fair meaning and as if prepared by all of the Parties. Each Master Developer and the City acknowledge that they have read this Agreement and each has been represented by legal counsel in negotiating this Agreement and that neither party shall have any provision of this Agreement construed against such Party as a result of such Party's involvement, or any other Party's lack of involvement, in the drafting of this Agreement. Each Party has executed this Agreement voluntarily. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. Furthermore, this Agreement shall be construed so as to effectuate the public purposes, objectives and benefits set forth in Section 1.2 while protecting any compelling countervailing public interest and providing to Master Developers vested development rights as defined herein. As used in this Agreement, the words "include" and "including" shall mean "including, but not limited to" and shall not be interpreted to limit the generality of the terms preceding such word. The rights and remedies of the Parties shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof. Each reference to "Master Developer's portion of the Property" shall be deemed to refer to the portion of the Property identified on Exhibit C as relating to such Master Developer.
- 7.9 **Performance.** To the extent allowed by law, each Party or other Person governed or affected by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience the enjoyment by any Party of its rights under this Agreement.
- 7.10 **Modifications of Use Restrictions.** Each of the Owners and each Master Developer shall have the right, without the consent or approval of any other Person that owns or has any interest in any other part of the Project, to modify any zoning, use, density, design, setback, size, height, open space, road design and dedication, traffic configuration, site plan or other requirements or restrictions (collectively the "Use Restrictions") associated with any portion of the Project or the development thereof so long as modifications (a) are approved by the City in accordance with the City's standard approval processes; and (b) otherwise comply with all applicable laws. Nothing in this Agreement is intended to waive, eliminate or negate the right of any of the Owners to voice concerns or otherwise participate in public hearings and the other standard approval processes of the

City. Any modification to the Use Restrictions for any portion of the Project that satisfies the foregoing requirements shall be effective without the need for any further consents, approvals or amendments to the Agreement or documents related thereto.

7.11 **Laws and Forum.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and shall be construed in accordance with the City's Laws and Utah law. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Utah County, Utah.

7.12 **Court Costs and Attorneys Fees.** In the event of any legal action or defense between the parties arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled, in addition to the remedies and damages, if any awarded in such proceedings, to recover their costs and reasonable attorneys' fees.

7.13 **Non-Liability of Related Persons.** Except in the event of fraud or other ultra vires conduct, no officer, representative, agent or employee of any Party (the "Related Party") shall be personally liable to the other Party or any successor in interest or assignee of such other Party in the event of any default or breach by the Related Party, or for any amount which may become due to such other Party, or such other Party's successors or assigns, or for any obligation(s) arising under the terms of this Agreement.

7.14 **No Third Party Rights.** Unless otherwise expressly provided herein, the obligations of Master Developers and the City set forth in this Agreement shall not create any rights in or obligations to any other persons or third parties.

7.15 **Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed as follows:

The City:

City of Lehi

Attention: _____

Master Developers:

Anderson Lehi, LLC
9537 South 700 East
Sandy, Utah 84070
Attention: Gerald D. Anderson

Attention: _____

Attention: _____

Such addresses may be changed by notice to the other party given in the same manner as above provided. Any notice given hereunder shall be deemed given as of the date delivered or mailed.

- 7.16 **Entire Agreement.** This Agreement, together with the exhibits and appendices attached hereto, documents referenced herein and all regulatory approvals given by the City for the Property, contains the entire agreement of the parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the parties which are not contained in such agreements, regulatory approvals and related conditions. It is expressly agreed by the parties that this Agreement is intended to and shall govern the development of the Property pursuant to the City's Laws and other applicable law. It is expressly acknowledged by the parties that additional agreements may be entered into by the parties and, potentially, other parties relating to the development and financing of the Property ("Additional Agreements").
- 7.17 **Severability.** If any term, provision, commitment, or restriction of this Agreement or the application thereof to any party or circumstances shall, to any extent, be determined by a court of law or equity to be invalid or unenforceable, the remainder of this instrument shall remain in full force and the parties shall act in good faith and the City and the Owners shall cooperate to cure each such legal defect, including amending those portions of the Agreement determined to be invalid or unenforceable without diminishing the rights and authority of the parties.
- 7.18 **Effectiveness.** This Agreement shall be effective upon the signing and execution of this Agreement by both parties with due approval by the Lehi City Council which, upon its occurrence, shall be deemed to have occurred as of the Effective Date.
- 7.19 **Termination.** This Agreement shall continue until the twenty-second annual anniversary of the Effective Date with two additional terms of four years each to run consecutively following the initial term of this Agreement with such additional term commencing

automatically with respect to each Master Developer that is in substantial compliance with this Agreement at the time such additional term is scheduled to commence.

- 7.20 **Waiver.** No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any Party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.
- 7.21 **Financing.** Notwithstanding any provisions to the contrary as may be provided elsewhere in this Agreement, the holders of Senior Mortgages shall have the following rights:
- 7.21.1 **Definitions.**
- (a) Mortgage. The term "Mortgage" means any duly recorded and valid mortgage or deed of trust encumbering any portion of the Property.
 - (b) Senior Mortgage. The term "Senior Mortgage" shall mean any Mortgage that secures an obligation with an original principal sum in excess of \$1,000,000.
 - (c) Senior Mortgage Holder. The term "Senior Mortgage Holder" shall mean the holder of the beneficial interest in any Senior Mortgage.
- 7.21.2 **Notice of Default.** Any Senior Mortgage Holder shall be entitled to receive from the Parties, if such Senior Mortgage Holder has so requested in writing of those Parties, a copy of any Notice of Default issued by such Parties to the owner of the land mortgaged in favor of such Senior Mortgage Holder.
- 7.21.3 **Mortgage Protection Clause.** No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise.
- 7.22 **Priority and Subordination.** This Agreement shall be recorded against the Property senior to all liens (other than liens of non-delinquent taxes and assessments as of the Effective Date) and/or trust deeds encumbering the Property. All future lenders, lien holders, trustees and trust deed holders of any type holding liens or encumbrances on any portion of the Property from and after the Effective Date hereby are notified (a) that such

liens or encumbrances shall automatically be subordinate to this Agreement and all future amendments to this Agreement, and (b) to execute and deliver within 10 days following delivery of a written request for the same, any additional documentation that may be reasonably required by the City or any Master Developer to confirm that subordination.

- 7.23 **Estoppel Certificates.** Within ten business days following delivery to any Party of a written request for an estoppel certificate respecting the status of performance under this Agreement and including a proposed form for that estoppel certificate, the Party to which that request was delivered shall deliver to the requesting Party a reasonable estoppel certificate respecting such matters. That certificate shall be addressed to any lenders, purchasers, government agencies or other individuals or entities designated by the requesting Party. A Party's failure to deliver such estoppel certificate shall be presumed to mean that such Party is not aware of any defaults or delinquencies under the Agreement and does not object to the form of estoppel certificate proposed by the requesting Party and is later estopped from asserting a contrary position.
- 7.24 **Survival.** All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.
- 7.25 **Further Action.** The parties hereby agree to execute and deliver such additional documents and to take all further actions as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.
- 7.26 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[remainder of page intentionally left blank; signatures set forth on following page]

IN WITNESS WHEREOF, the parties have executed this Development Agreement.

DATED this ____ day of _____, 2008.

CITY OF LEHI, a municipal corporation organized
and existing under the laws of the State of Utah

By: _____
_____, Mayor

ATTEST:

_____, City Recorder

ANDERSON LEHI, LLC
a Utah limited liability company

By: _____
Gerald D. Anderson, Manager

[Insert signatures for additional Master Developers

Insert signature block for the consent of each owner of a portion of the Property]

[notarial acknowledgments set forth on following page]

ANDERSON LEHI ACKNOWLEDGEMENT

STATE OF UTAH)
 : ss.
County of Salt Lake)

On this ____ day of _____ 2008, before the undersigned notary public in and for the said state, personally appeared GERALD D. ANDERSON, known or identified to me to be the Manager of Anderson Lehi, LLC, a Utah limited liability company, and the person that executed the foregoing instrument.

Notary Public for Utah

Residing at: _____

My Commission Expires: _____

[Insert notarial acknowledgments for other Master
Developers and Owners]

APPENDIX 1

Definitions

Each of the terms set forth in quotes below shall have the meaning ascribed thereto herein:

“City Code” means the Lehi City Code.

“City Council” means the Lehi City Council.

“City’s Laws” means, collectively, the following as in effect on the Effective Date, (i) the City’s ordinances, resolutions, Design Standards and Public Improvements Specifications, policies, plans, procedures, regulations, goals, objectives, moratoria and other applicable requirements, including the General Plan and the City Code.

“Impact Fee Certificates” means a certificate issued by the City representing the right to receive reimbursements of or credits toward the payment of impact fees payable to the City and of the type specified on such certificate.

“Person” means any natural person or any corporation, partnership, limited liability company, trust, organization, association, entity or other legally recognized form of person.

“Project Plan” means the plans and agreements for development and/or redevelopment of each Master Developer’s portion of the Property as set forth in Exhibit D attached hereto and incorporated herein by this reference as such may be modified or supplemented from time to time with the consent of such Master Developer and the City.

EXHIBIT A

THE ANNEXATION PARCEL

[see attached]

EXHIBIT B

THE RESOLUTION

[see attached]

EXHIBIT C

THE PROPERTY

The Property shall consist of the land described on Exhibits C-1 through C-__ attached hereto and incorporated herein and, to the extent deemed necessary by any Master Developer, all appurtenances thereto.

EXHIBIT C-1

ANDERSON DEVELOPMENT SERVICES, INC.'S PORTION OF THE PROPERTY

[see attached]

EXHIBIT C-2

'S PORTION OF THE PROPERTY

[see attached]

EXHIBIT C-__

'S PORTION OF THE PROPERTY

[see attached]

EXHIBIT D

PROJECT PLAN

[see attached]

EXHIBIT E

WATER RIGHTS TRANSFER PROCEDURES

[see attached]